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No. 91-971

SEARCHED INDEXED
MAR 11 1992
U.S. SUPREME COURT

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

TWO PESOS, INC.,

Petitioner,

v.

TACO CABANA INTERNATIONAL, INC., *et al.*,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

JOINT APPENDIX

Volume II

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PETITION FOR CERTIORARI FILED OCTOBER 18, 1991
CERTIORARI GRANTED JANUARY 27, 1992

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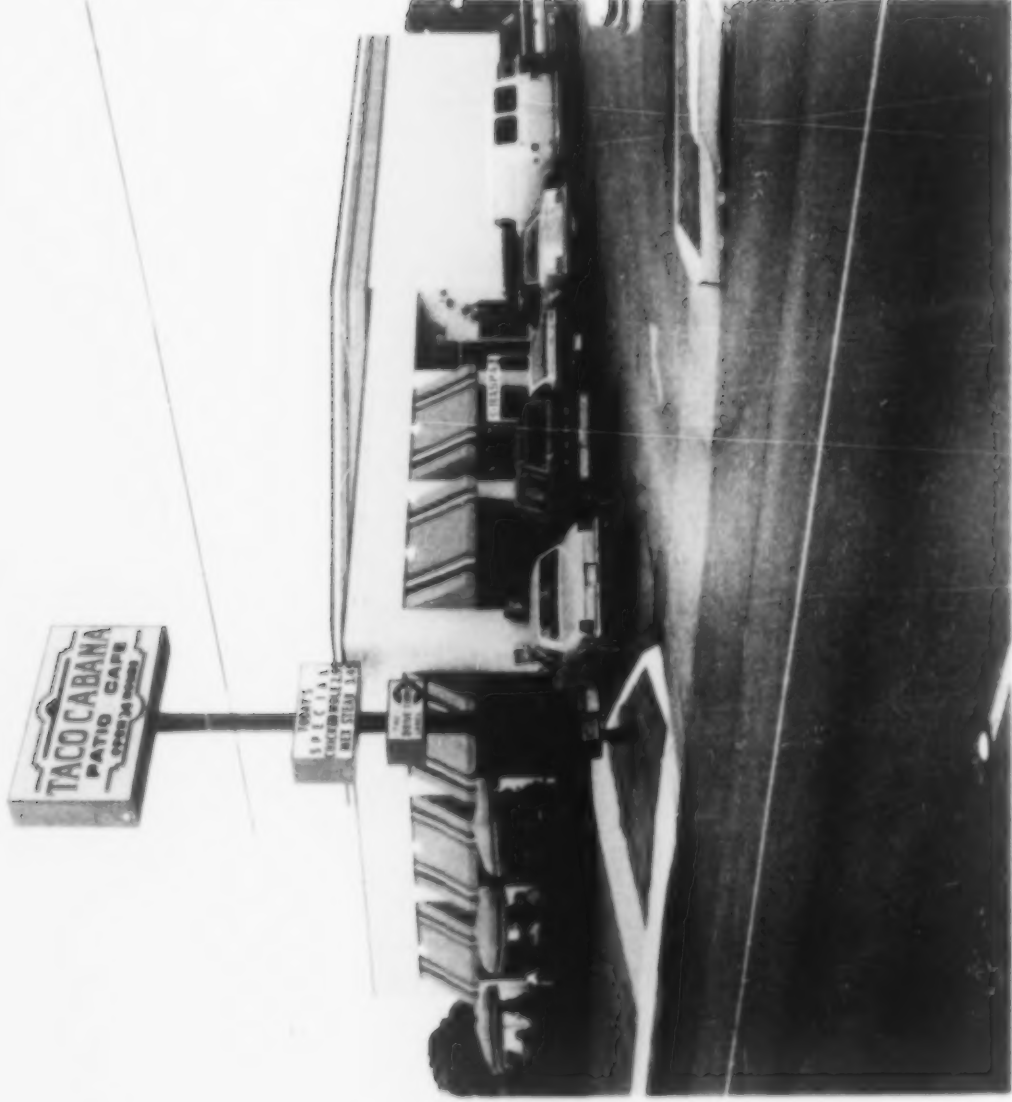
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Exterior View of Taco Cabana



Exterior View of TaCasita

RESTAURANT OPENINGS & LOCATIONS

INSIDE TEXAS

TWO PESOS

TA CASITA

TACO CABANA

Company	Date Opened	Location
HOUSTON		
Two Pesos	12/10/85	1611 Gessner, Houston
Two Pesos	2/17/86	8101 S. Main, Houston
Ta Casita	2/28/86	5540 Richmond, Houston
Two Pesos	5/01/86	Galveston Place, Galveston
Two Pesos	6/02/86	8902 Richmond, Houston
Two Pesos	6/24/86	3905 Kirby, Houston
Two Pesos	8/11/86	10 West FM 1960, Houston
Two Pesos	2/26/87	Highway 290, Houston
Two Pesos	4/21/87	Westheimer/Nantucket, Houston
Two Pesos	9/02/87	11079 Westheimer, Houston
Two Pesos	10/23/87	705 W. Bay Area Blvd., Webster
Taco Cabana	10/28/87	700 N. Loop West 610, Houston
Two Pesos	10/29/87	6695 Hillcroft, Houston
Taco Cabana	12/05/87	9220 Gulf Freeway, Houston
Two Pesos	1/12/88	7400 FM 1960 West, Houston
Taco Cabana	2/22/88	6890 Harrisburg, Houston
Two Pesos	4/01/88	I-45 at Tidwell, Houston



RESTAURANT
OPENINGS &
LOCATIONS

INSIDE
TEXAS

TWO PESOS

TA CASITA

TACO CABANA

Company	Date Opened	Location
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AUSTIN

Ta Casita	1/31/86	8415 Research, Austin
Taco Cabana	5/14/87	711 E. Ben White, Austin

SAN MARCOS

Taco Cabana	11/25/87	135 Long Street, San Marcos
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EL PASO

Two Pesos	12/16/87	Mesa Ave. at I-40, El Paso
Taco Cabana	2/02/88	1777 Lee Trevino, El Paso
Taco Cabana	7/18/88	5866 N. Mesa, El Paso



RESTAURANT OPENINGS & LOCATIONS

INSIDE TEXAS

TWO PESOS

TA CASITA

TACO CABANA

717-850-2222

Company	Date Opened	Location
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DALLAS-FORT WORTH

Two Pesos	5/18/87	4355 Camp Wisdom Road, Dallas
Two Pesos	6/20/87	1505 N. Collins, Arlington
Taco Cabana	7/22/87	3071 W. Northwest Hwy., Dallas
Two Pesos	8/19/87	12475 E. Northwest Highway, Dallas
Two Pesos	9/16/87	3700 S. Cooper, Arlington
Taco Cabana	10/14/87	3923 Lemmon Avenue, Dallas
Two Pesos	1/28/88	Greenville at Alta, Dallas
Taco Cabana	3/14/88	6600 Camp Bowie, Fort Worth
Two Pesos	4/11/88	7669 Grapevine Hwy., Fort Worth
Taco Cabana	4/25/88	6615 E. Northwest Hwy., Dallas

SAN ANTONIO

Taco Cabana	9/21/78	3310 San Pedro, San Antonio
Ta Casita	4/14/83	5630 Wurzbach, San Antonio
Taco Cabana	3/09/84	8629 Perrin Beltei, San Antonio
Ta Casita	8/23/84	1633 S.W. Military Dr., San Antonio
Taco Cabana	7/01/85	4205 Fredericksburg, San Antonio
Taco Cabana	10/01/85	15925 San Pedro, San Antonio
Taco Cabana	1/03/86	9603 San Pedro, San Antonio

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**RESTAURANT
OPENINGS &
LOCATIONS**

**OUTSIDE
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TWO PESOS

TA CASITA

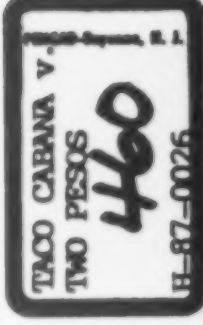
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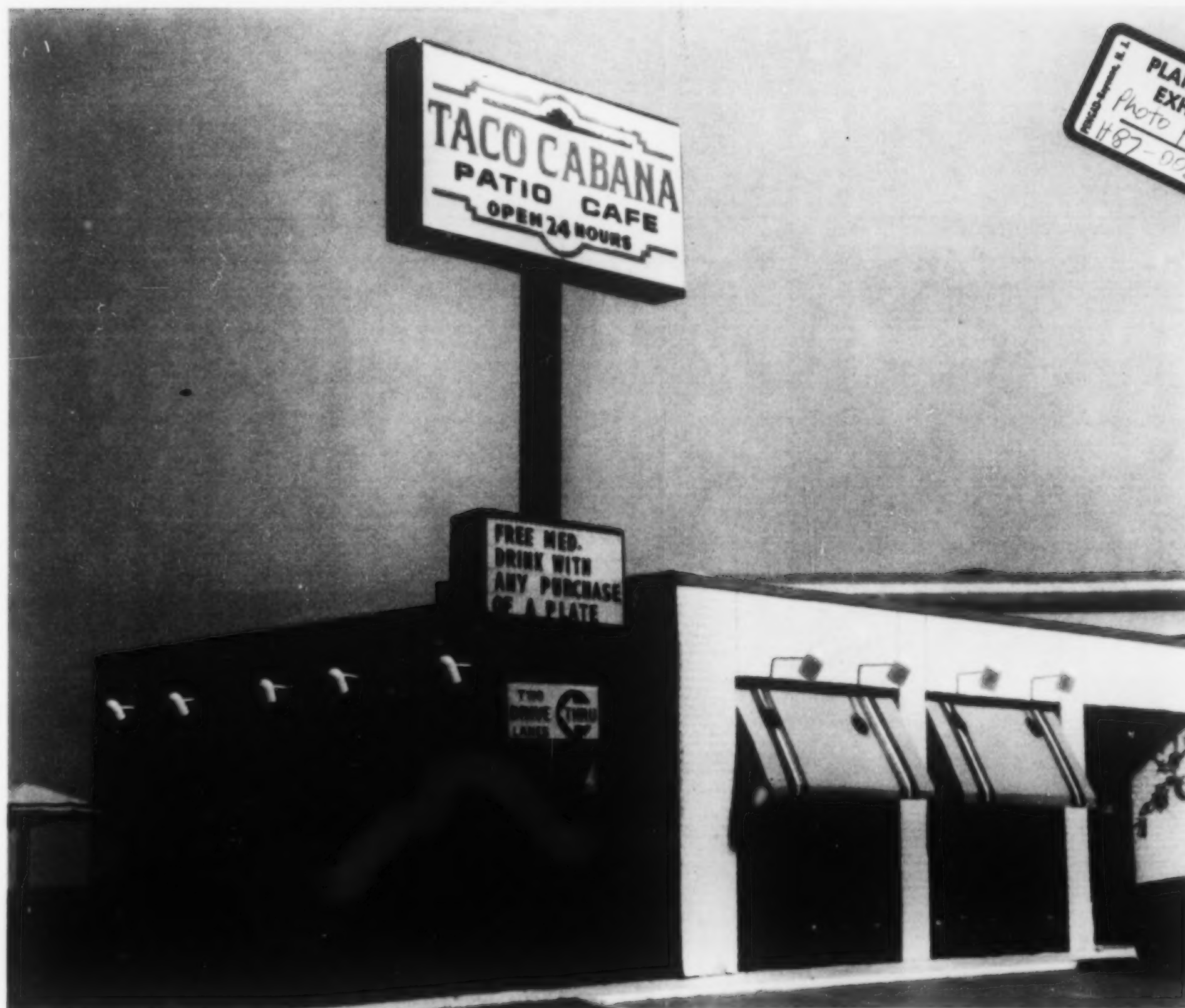
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Company	Date Opened	Location
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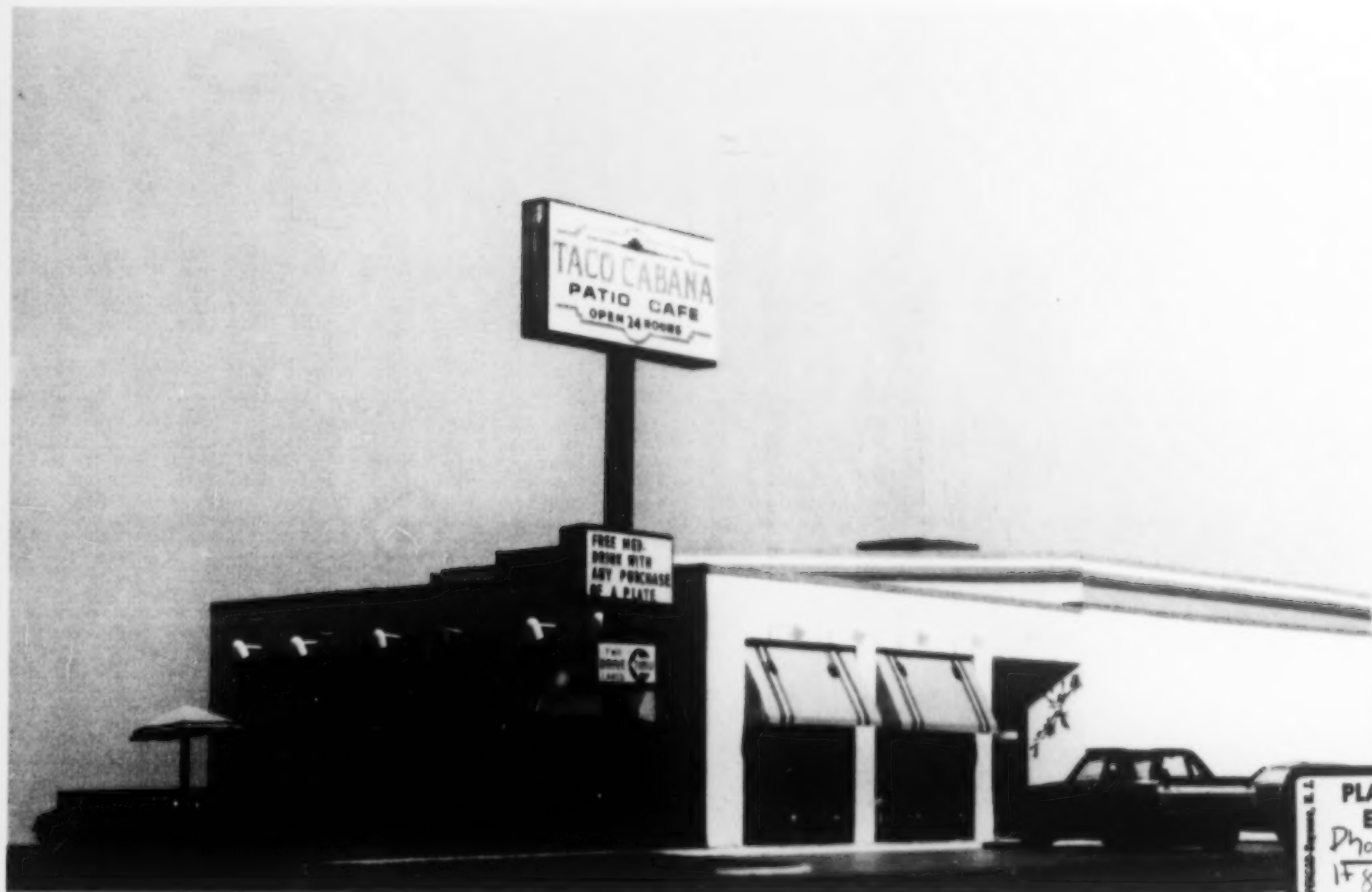
VARIOUS CITIES

Two Pesos	10/19/86	8900 Wadsworth Blvd. Denver, Colorado
Two Pesos	6/01/87	Military Highway Norfolk, Virginia
Two Pesos	1/08/88	Meridian Ave. at N.W. Highway Oklahoma City, Oklahoma
Two Pesos	2/15/88	74th St. at Pennsylvania Oklahoma City, Oklahoma
Two Pesos	3/31/88	Northwestern Ave. at I-44 Oklahoma City, Oklahoma
Two Pesos	4/17/88	412 Meridian Ave. at Reno Ave. Oklahoma City, Oklahoma
Two Pesos	4/28/88	1735 E. Southern Ave. Tempe, Arizona
Two Pesos	6/24/88	1855 Piedmont Ave. N.E. Atlanta, Georgia
Two Pesos	8/06/88	Second Restaurant Norfolk, Virginia



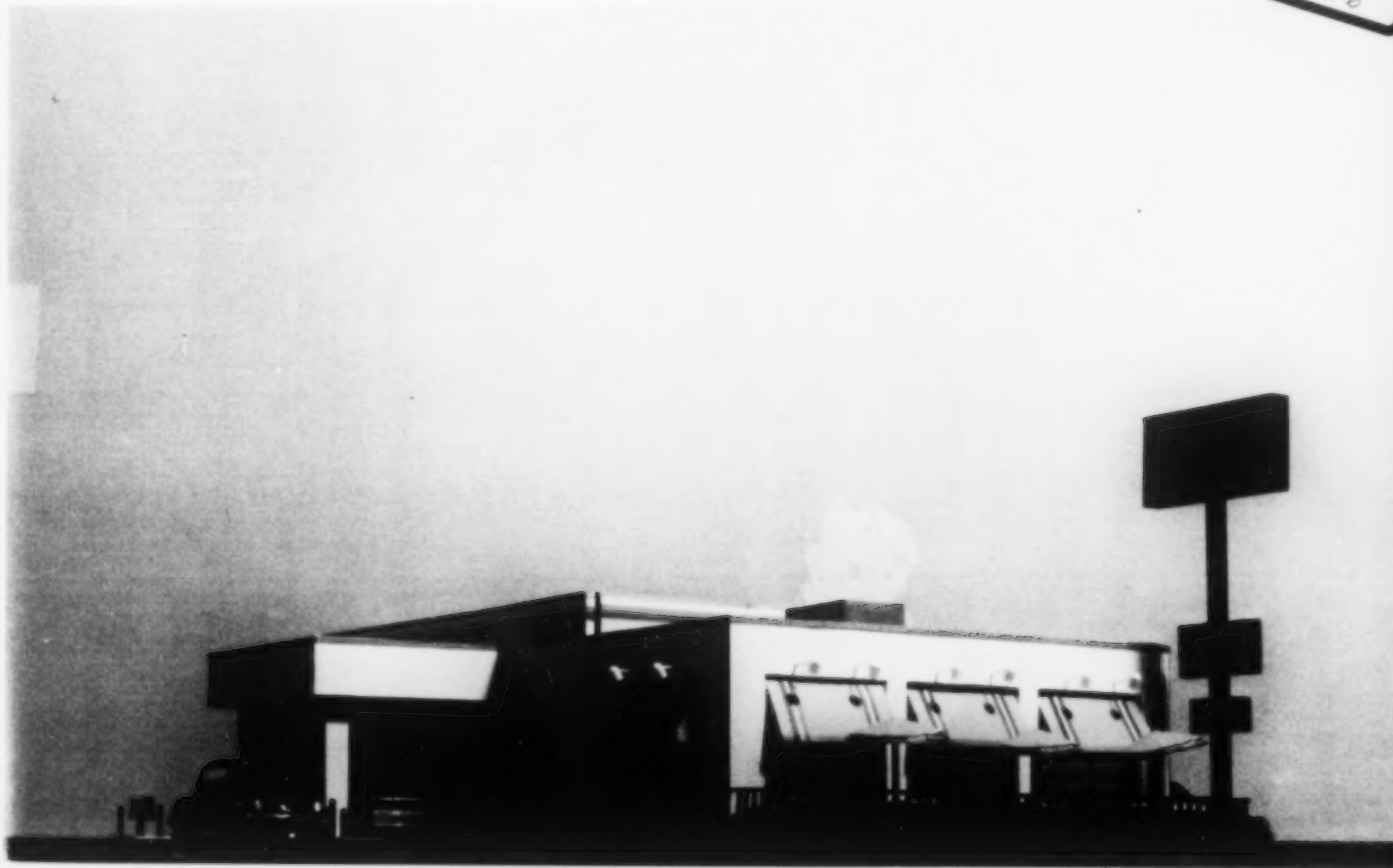


PLAINTIFF'S
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Photo PX-3
487-0926



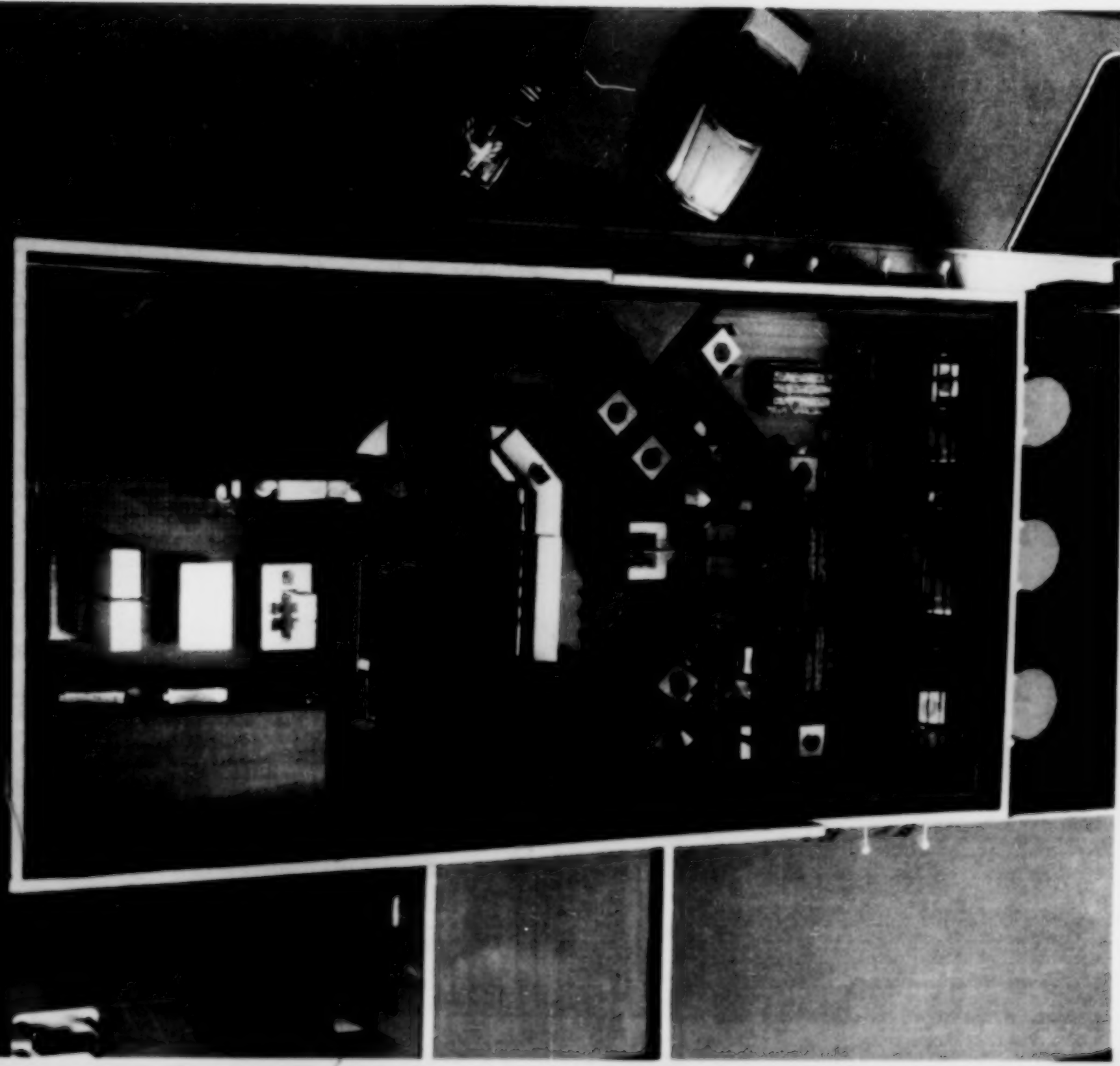
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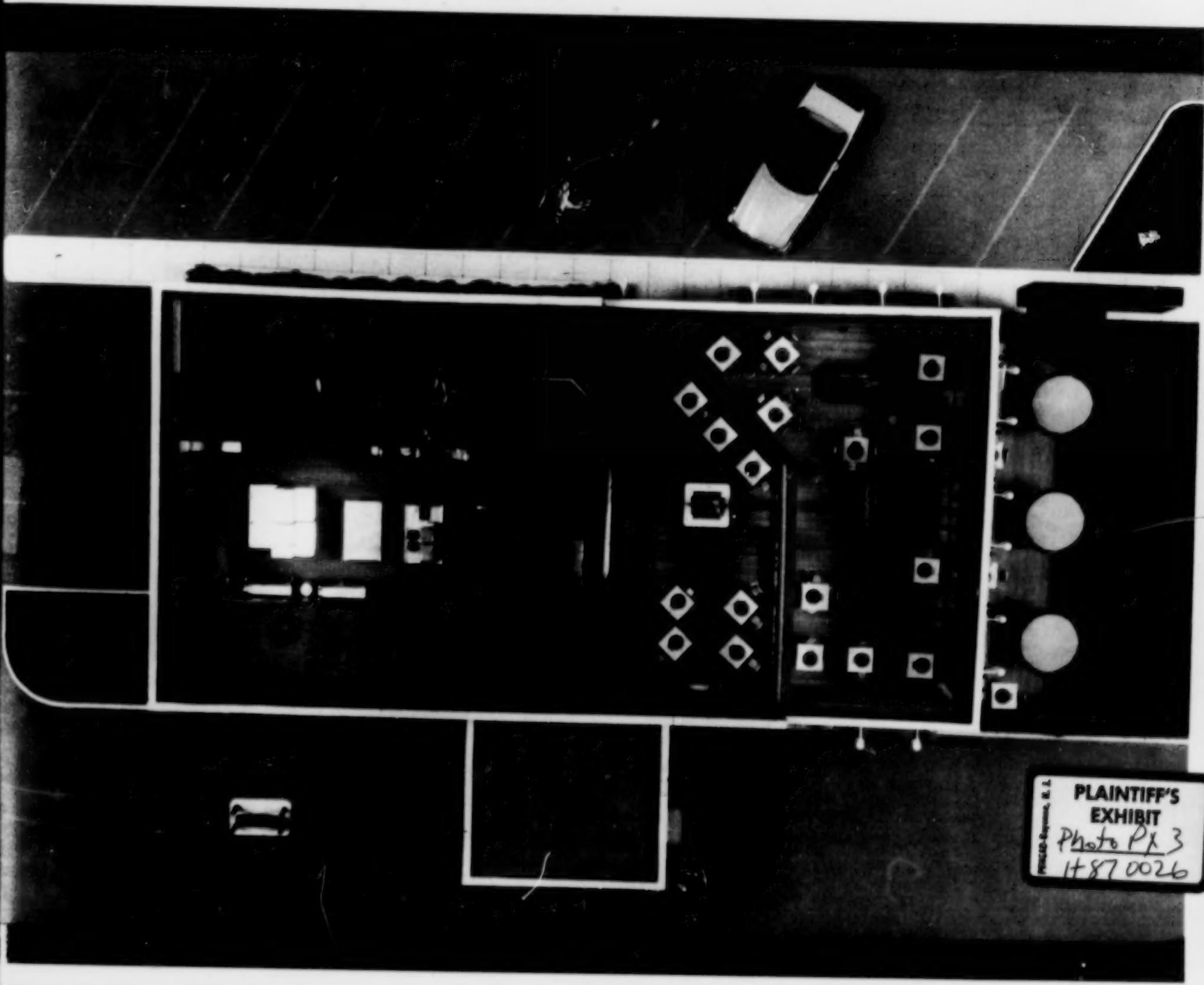
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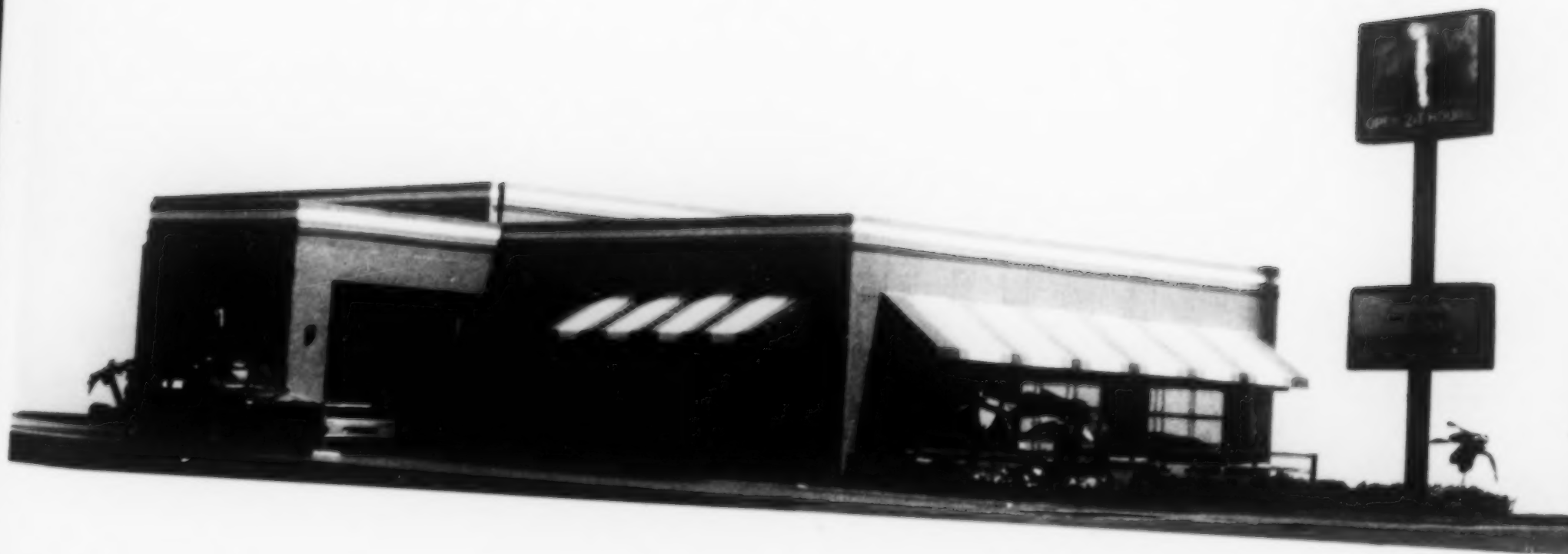
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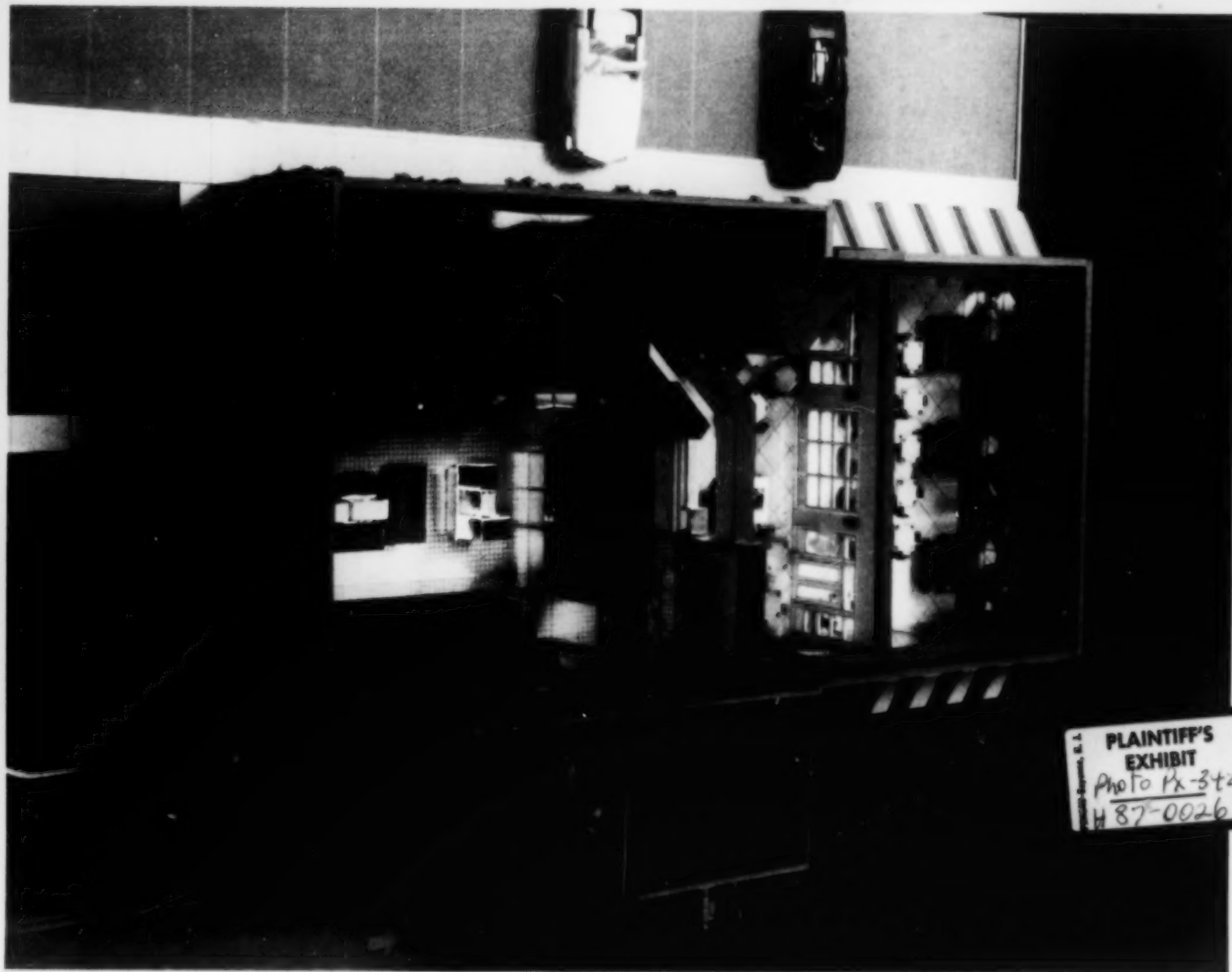
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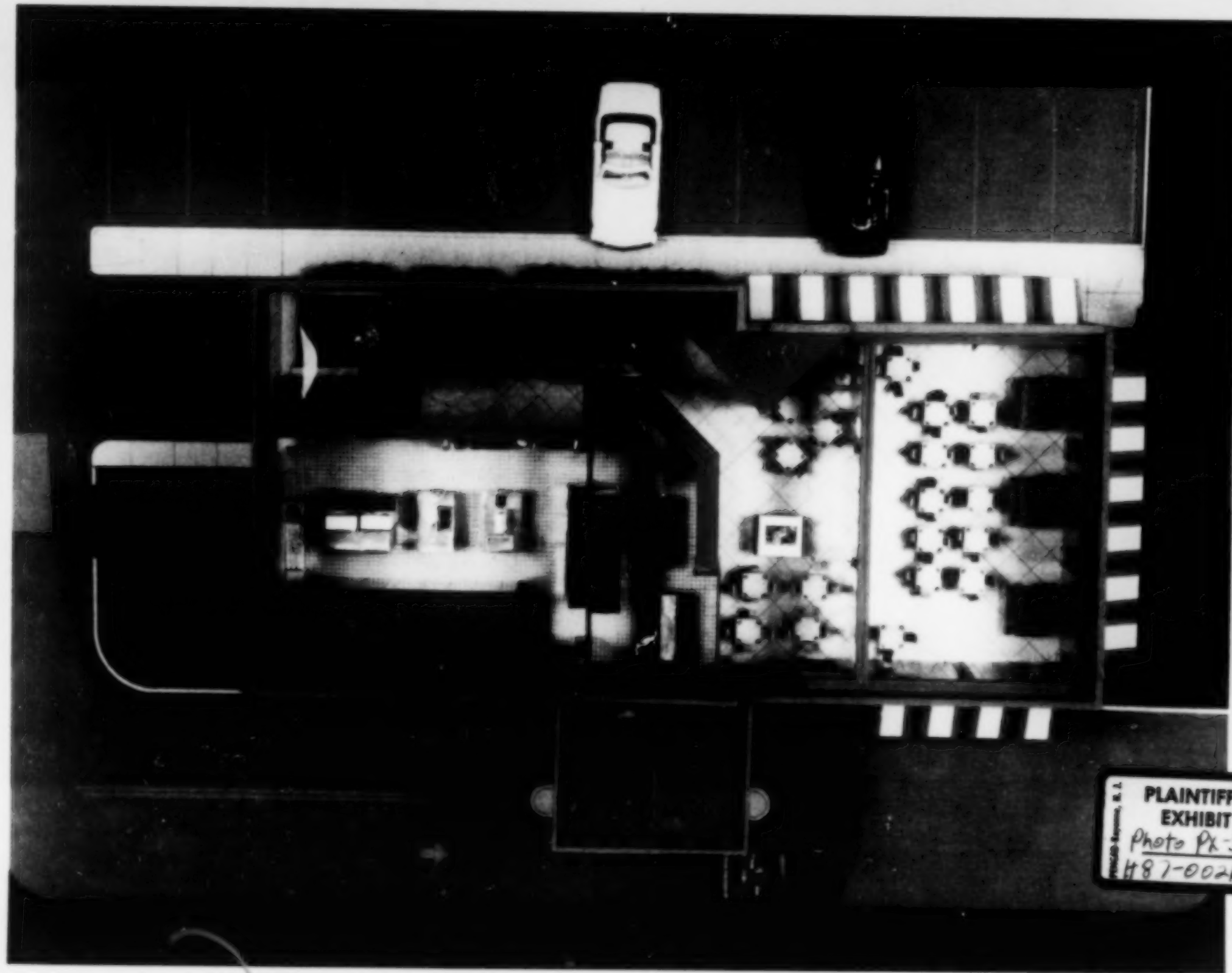


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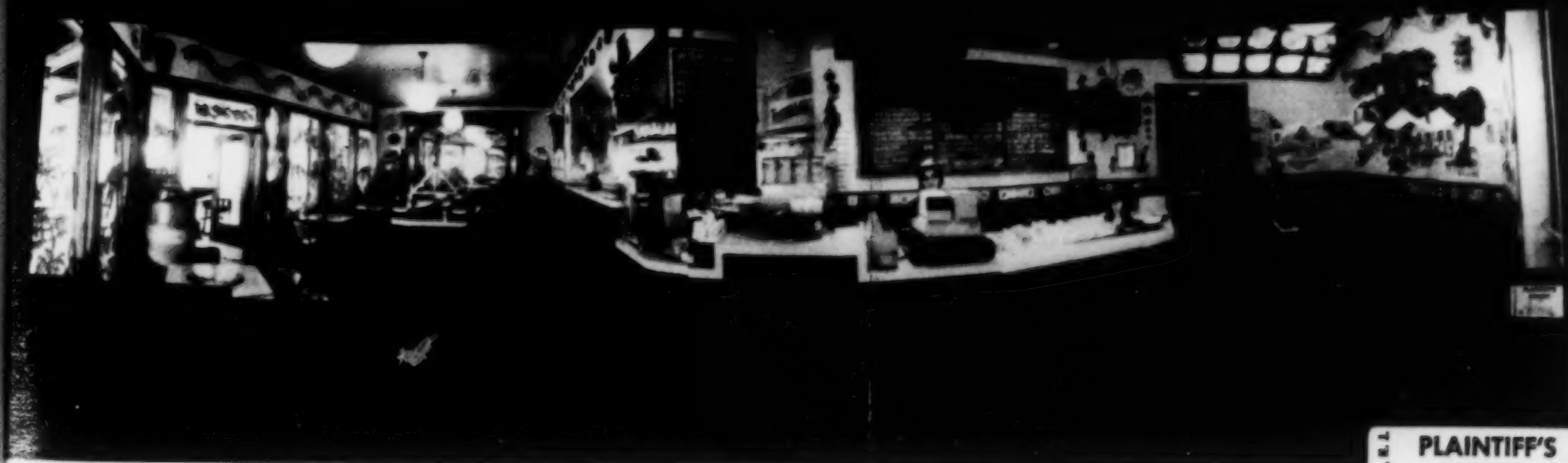
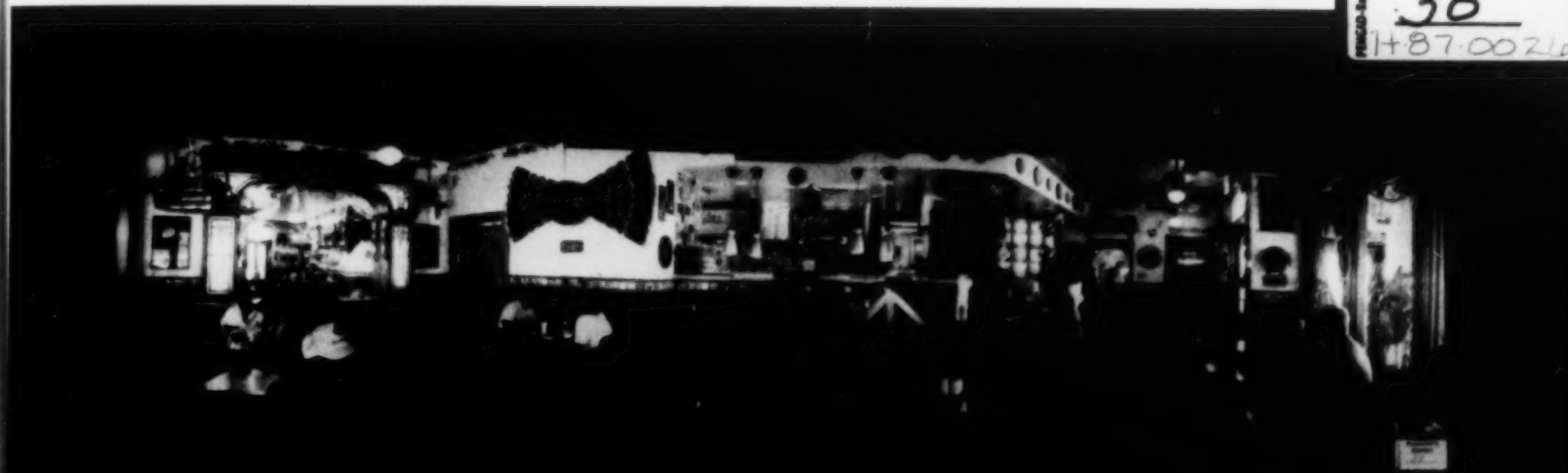
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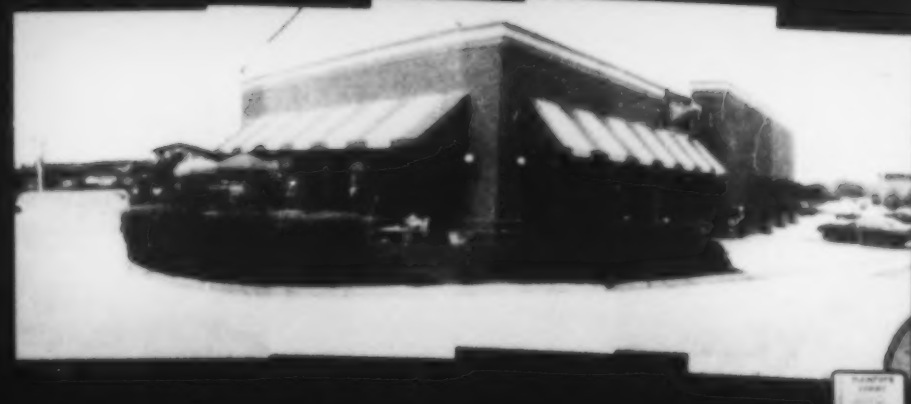
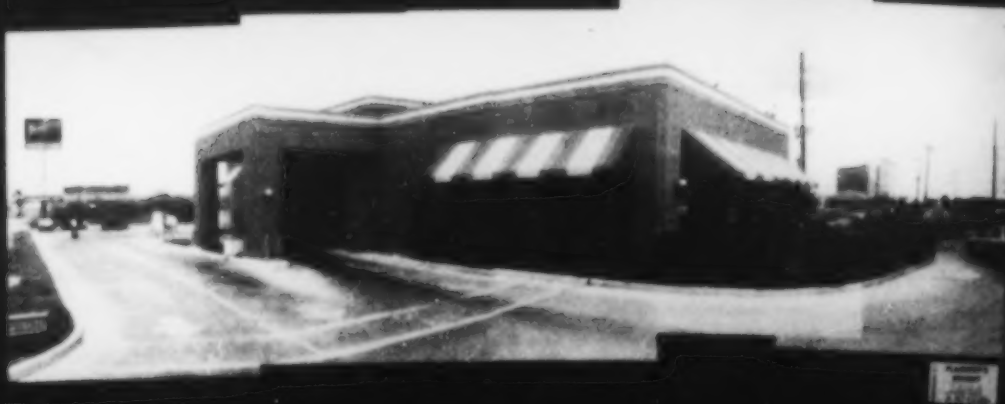
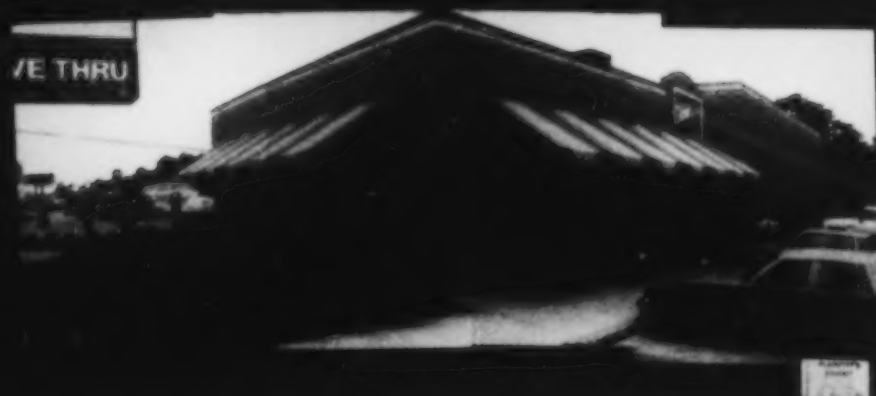
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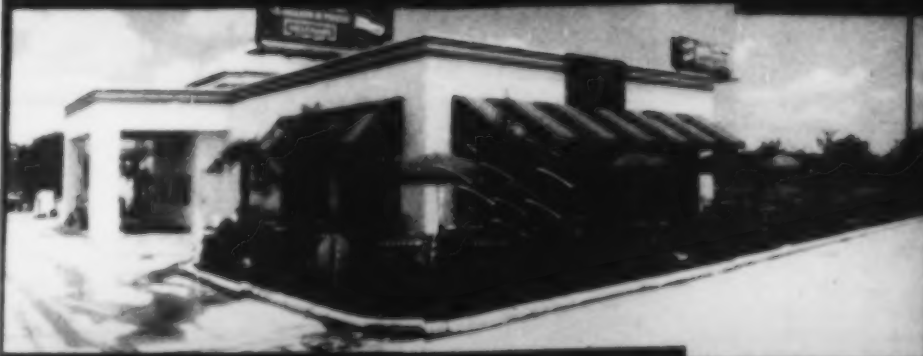


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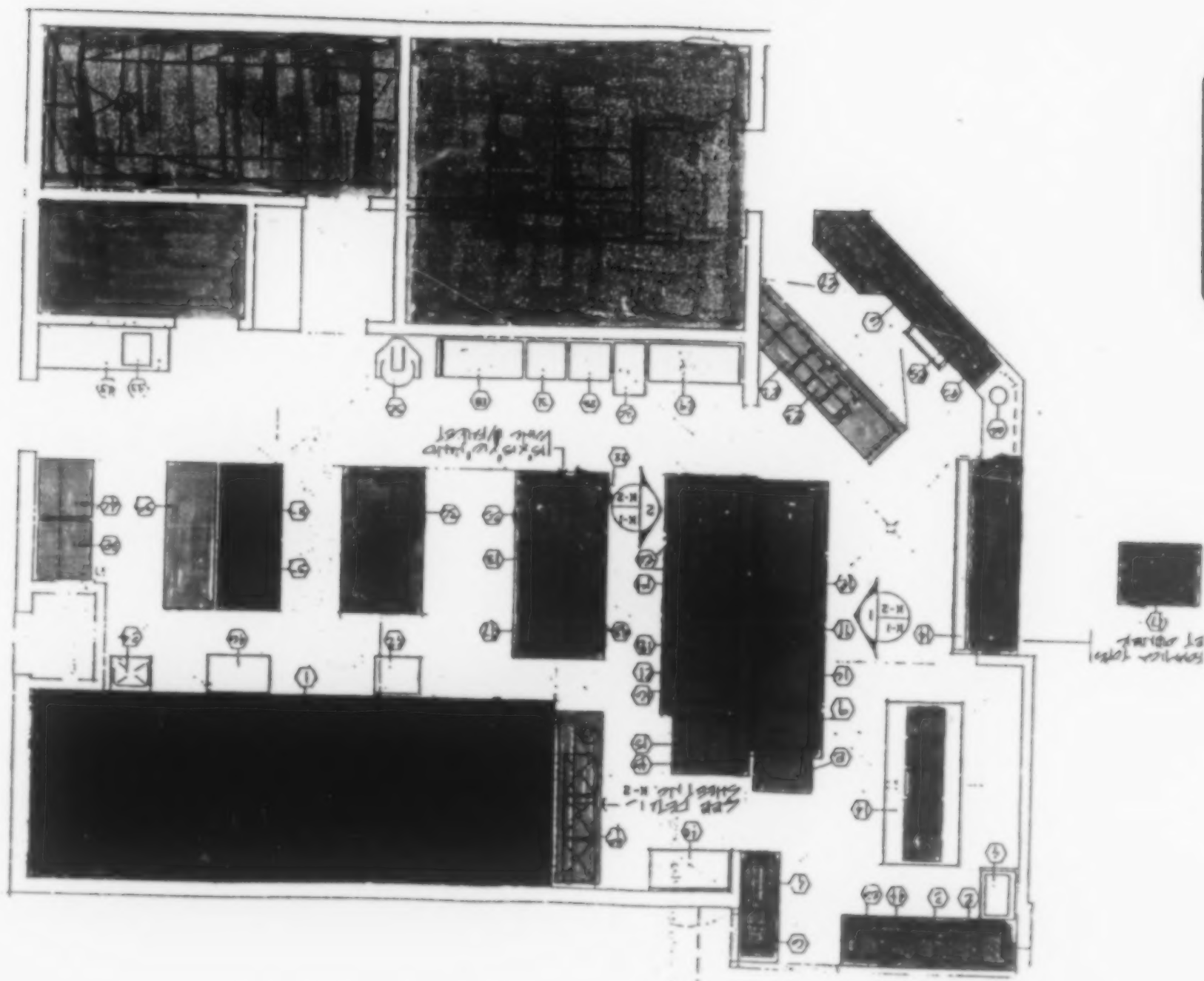
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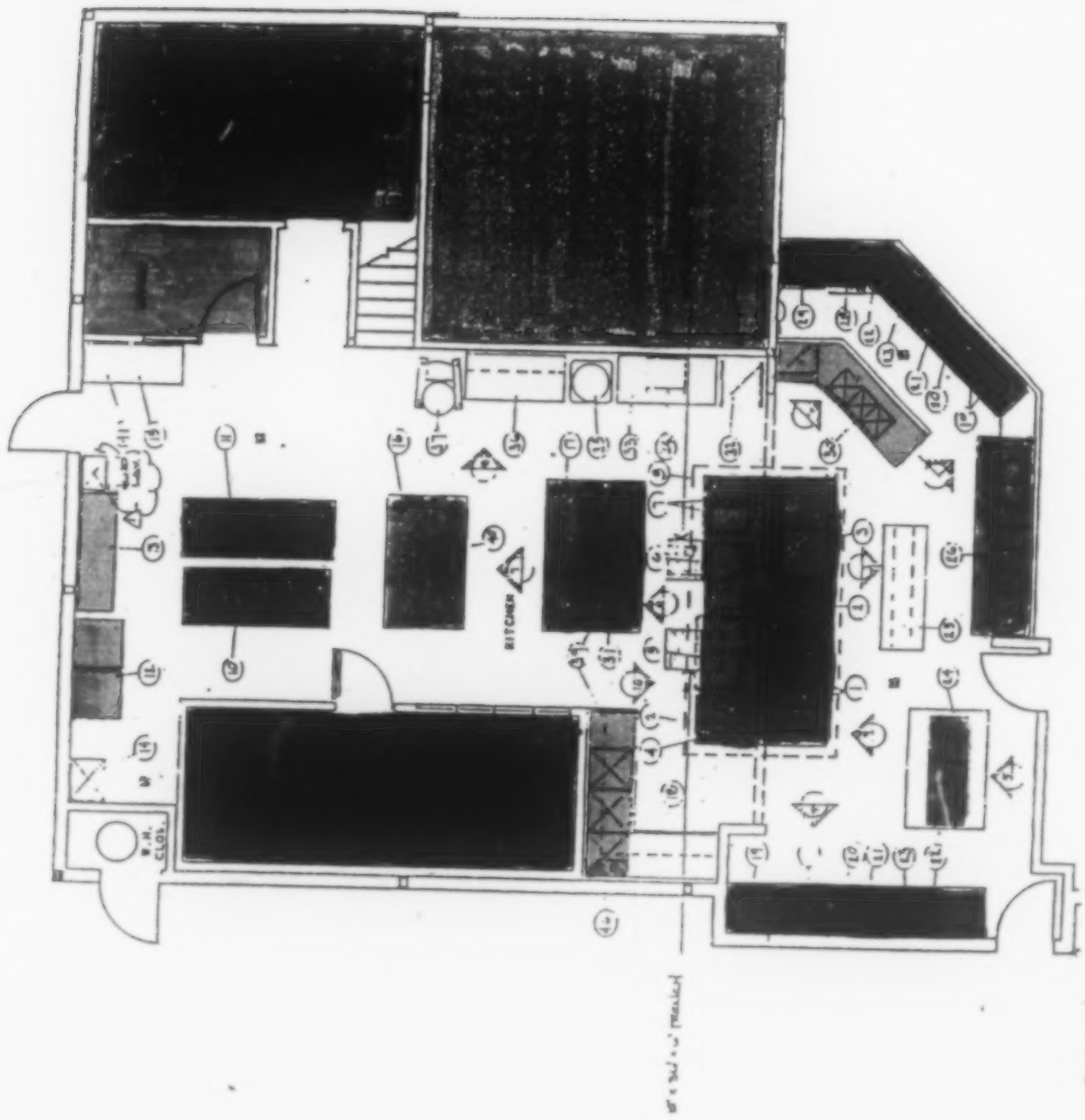
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PERCUT-Exhibit, R. L.



FOOD SERVICE EQUIPMENT
FLOOR PLAN
SCALE 1/4" = 1'-0"

PLAINTIFF'S
EXHIBIT
446
H 87 0026
PENGAD-Beynon, R. L.

OVERSIZE FOLDOUT(S) FOUND HERE IN
THE PRINTED EDITION OF THIS VOLUME
ARE FOUND FOLLOWING THE LAST PAGE
OF TEXT IN THIS MICROFICHE EDITION.

SEE FOLDOUT NO 1-2

Very Verdict

SPECIAL VERDICT SHEET

Jury Returned

4:18

1. Does Taco Cabana have a trade dress?

~~_____~~ YES _____ NO

If you answer question number 1 "YES", answer question number 2. If you answer question number 1 "NO", skip to question number 8.

2. Is Taco Cabana's trade dress, taken as a whole, non-functional?

~~_____~~ YES _____ NO

If you answer question number 2 "YES", answer question number 3. If you answered question number 2 no, skip to question number 8.

3. Is Taco Cabana's trade dress inherently distinctive?

~~_____~~ YES _____ NO

4. Has Taco Cabana's trade dress acquired a secondary meaning in the Texas market?

_____ YES

~~_____~~ NO

If you answer either question numbers 3 or 4 "YES", answer question number 5. If you answered question number 3 and question number 4 "NO", skip to question number 8.

5. Is there a likelihood that customers might associate or confuse a Taco Cabana restaurant with a Two Pesos restaurant?

~~_____~~ YES

~~_____~~ NO

- If you answer question number 5 "YES" answer question number 6. If you answer question number 5 "NO", skip to question number 8.

6. Has Taco Cabana exercised adequate supervision and control over TaCasita to make sure the quality of its goods or services are not inferior to those of Taco Cabana?

~~_____~~ YES

~~_____~~ NO

If you answer question number 6 "YES", answer question number 7. If you answer question number 6 "NO", skip question number 7 and answer question number 8.

7. Was Taco Cabana damaged as a result of Two Pesos' infringement of Taco Cabana's trade dress?

X YES _____ NO

8. Are Taco Cabana's architectural plans a trade secret?

X YES _____ NO

9. Is Taco Cabana's kitchen equipment layout and design a trade secret?

X YES _____ NO

10. Are Taco Cabana's kitchen and restaurant operating procedures a trade secret?

_____ YES X _____ NO

If you answer questions number 8 or 9 or 10 'YES', go on to question number 11. If you answer all of questions 8, 9 and 10 "NO", skip to the instruction below for question number 15.

11. Did Two Pesos breach a confidential relationship or discover Taco Cabana's architectural plans, or kitchen equipment layout and design, or kitchen and restaurant operating procedures improperly?

~~_____~~ YES _____ NO

12. Did Two Pesos use Taco Cabana's architectural plans, or kitchen equipment layout and design, or kitchen and restaurant operating procedures?

~~_____~~ YES _____ NO

If you answer question number 12 "YES", answer question number 13. If you answer question number 12 "NO", skip to the instruction below for question number 15.

13. Was Taco Cabana damaged as a result of Two Pesos' use of Taco Cabana's architectural plans, or kitchen equipment layout and design, or kitchen and restaurant operating procedures?

X YES _____ NO _____

If you answer question number 13 "YES", answer question number 14. If you answer question number 13 "NO", skip question number 14 and go to the instruction below for question number 15.

14. What is the value to Taco Cabana in money, if paid in cash, of the trade secret or secrets misappropriated by Two Pesos?

\$ 150,000

If you answered question number 7 "YES", answer question number 15. If you answered question number 7 "NO", do not answer question number 15 and have the foreperson sign and date the special Verdict Sheet.

15. What amount of money, if paid now in cash, will reasonably compensate Taco Cabana for the infringement of its trade dress.

A. Lost Profits	\$ <u>306,000</u>	306,000
B. Lost Income	\$ <u>628,300</u>	628,300
C. Loss of Goodwill	\$ <u>0</u>	

DATE

FOREPERSON

a) 1.7mm X Stores X
 6% margin - G.A. of ^{204,000}~~203,846~~ =
\$306,000
 lost profits

b) lost income -
 Crapang 26 X \$10,000 = 260,000
 franchises 3 X 5,000 15,000
\$275,000
306,000
150,000
\$731,000
~~\$1,084,300~~

\$50,000

- 1) Plans X
 - 2) site ass. X
 - 3) name X
 - 4) Trade dress ~~mark~~
 - 5) op. manual X
 - 6) corp. structure X
 - 7) goodwill X
 - 8) proven concept
 - 9) advertising
-

at least profits 306,000

at least income

275,000
353,300
\$1 628,300

628,300

934,300

150,000

\$1,084,300

from prev. pg

$$1.7 \times 1\% \times 26 = 442,000$$

$$1.7 \times \frac{1}{2}\% \times 3 = \frac{25,500}{467,500}$$

$$G \& A - 114,200$$

$$\underline{\$353,300}$$

PLAINTIFF'S
EXHIBIT
448
H-87-0026

HANDICAP

RE: FB

KITCHEN

OFFICE OR STORAGE

WOMEN'S

JANITOR

DRIVE-THRU

COUNT

TERRAZZO
CLAY PLANTING
POTTERIES
POTTERIES

ENTRY MAT
RE: FB

RE: FB

B

C

G

D

